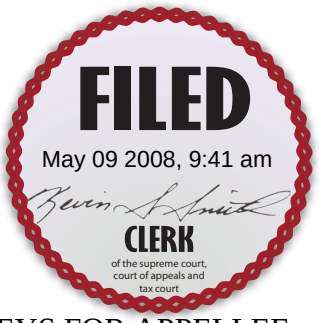

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IN THE
COURT OF APPEALS OF INDIANA

JOHNNY WHITE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 64A03-0802-PC-35
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable William Alexa, Judge
Cause No. 64D02-0611-FB-10283

May 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Johnny White pleaded guilty to class B felony Robbery.[1] As his sole issue on appeal, White challenges the fifteen-year sentence imposed by the trial court as inappropriate.

We affirm.

On November 13, 2006, two men, later identified as White and Jonathon Sharp, entered seventy-nine-year-old Mary Wilbur's home and placed her in a chokehold while dragging her from her bed at 1:00 in the morning. She was forced into a chair in the living room and threatened with physical violence if she did not cooperate. At one point, one of the men held a knife to Wilbur's throat and a hammer over her head. She was told that her head would be crushed if she moved from the chair.

White and Sharp demanded money, jewelry, and drugs. When Wilbur denied having any of these things, the men ransacked her house. They eventually located a safe, which White pried open. The men took jewelry and money from the safe, as well as other property from around the house. Before leaving, they crushed Wilbur's two visible phones and warned her not to call the police or they would come back and harm her. The frightened Wilbur remained on the chair in her living room until her daughter called after 8:00 that morning.

An investigation of the crime quickly led to White and Sharp, who both confessed upon speaking with police the following day. The State charged White with burglary and robbery, both as class B felonies. Pursuant to a plea agreement entered into eight months

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[1] Ind. Code Ann. § 35-42-5-1 (West 2004).

later, White pleaded guilty to the robbery charge, the State dismissed the burglary charge, and sentencing was left to the court's discretion. At the sentencing hearing on October 5, 2007, the court accepted the plea agreement and subsequently sentenced White to fifteen years in prison with no time suspended. White now appeals, challenging the appropriateness of his sentence.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemeyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, "we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Moreover, we observe that White bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

On appeal, White "concedes that his crime was abhorrent, but contends that his youthful age, acceptance of responsibility, remorse, and absence of a criminal record more than mitigate the crime itself." *Appellant's Brief* at 5. Thus, he asks that we revise

his sentence to the advisory term of ten years in prison and suspend four of those years to probation.[2]

We begin with the nature of the offense, which is clearly aggravating. As set forth above, White does not dispute that the crime was particularly heinous (especially given the victim's age) or that the "circumstances of the crime were enough to give White the full twenty years." *Id*. at 7. Rather, he directs us to consider his character, including his alleged absence of a prior record, his age, his remorse, and his acceptance of responsibility. We will address each in turn.

We find, as did the trial court, that White's young age of eighteen is a mitigating circumstance. We cannot agree, however, with White's assessment of his criminal history. While at the age of eighteen White had no prior adult criminal history, he had numerous contacts with the juvenile justice system. In fact, White reported no less than thirteen juvenile referrals for runaway and fighting behaviors. He was eventually committed to the Indiana Boy's School for nine months around the time he turned seventeen. Moreover, while out on bond in the instant case, White was arrested three times in a four-month period for minor possession of alcohol, possession of marijuana, and burglary.[3] These facts do not reflect positively on White's character and do not support his argument for a reduced sentence.

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[2] Ind. Code Ann. § 35-50-2-5 (West, PREMISE through 2007 1st Regular Sess.) provides in relevant part: "A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

[3] We recognize that arrests and charges do not constitute evidence of criminal history. A record of arrest, however, may reveal that a defendant has not been deterred even after having been subject to the

Further, the record reveals that White has been using drugs daily since the 6th grade, including substantial drug use on the day of the instant crime. Despite having received substance abuse treatment in the past, he has continued to use drugs, even while out on bail in the instant case. Once again, these facts do not reflect well upon White's character, and we agree with the trial court that the fact White was under the influence of Xanax, vodka, marijuana, and cocaine on the day of the crime is not mitigating.

We acknowledge that White's guilty plea is entitled to some degree of mitigating weight. It is well established that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return. *See Cotto v. State*, 829 N.E.2d 520. The extent to which a guilty plea is mitigating, however, will vary from case to case. *See Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). As has been frequently observed, "a plea is not necessarily a significant mitigating factor." *Cotto v. State*, 829 N.E.2d at 525; *see also Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one"), *trans. denied*. Here, White received a substantial benefit in return for his guilty plea, as the class B felony burglary charge was dismissed. Further, the guilty plea was almost certainly also made for pragmatic reasons since both White and Sharp had already confessed to the crime.

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police authority of the State. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). Thus, such information may be relevant to the assessment of the defendant's character in terms of the risk that he will commit another crime. *Id*.

Therefore, while the guilty plea constituted a mitigating circumstance, it was not entitled to great weight.

Finally, we do not find White's statement of remorse at the sentencing hearing to be particularly indicative of his good character. Rather than express sincere remorse and acceptance of responsibility at sentencing, White seemed to blame his behavior on his ADHD, drug use, and involvement with Sharp. Further, White clearly attempted to downplay his culpability in the crime. White's more-recent account of his involvement in the crime, however, was in stark contrast not only to the victim's account but also to his confession made the day after the crime in which he admitted that he had armed himself with a knife and used it to gain Wilbur's compliance with his demands.

In summary, we find no compelling reason inherent in the nature of this offense or White's character that renders the fifteen-year sentence imposed by the trial court inappropriate.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.